

**In the Supreme Court of the United States**

OCTOBER TERM, 1998

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TOGO D. WEST, JR., SECRETARY,  
DEPARTMENT OF VETERANS AFFAIRS, PETITIONER

*v.*

MICHAEL GIBSON

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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**JOINT APPENDIX**

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**PETITION FOR CERTIORARI FILED: AUGUST 5, 1998**  
**CERTIORARI GRANTED: JANUARY 15, 1999**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS (CHICAGO)

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Docket No. 96-CV-223

MICHAEL GIBSON, PLAINTIFF

*v.*

TOGO D. WEST, JR, ACTING SECRETARY,  
DEPARTMENT OF VETERANS AFFAIRS, DEFENDANT

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**DOCKET ENTRIES**

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<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
1/11/96	1	COMPLAINT; jury demand - Civil cover sheet - Appearance(s) of Timothy Michael Kelly as attorney(s) for plaintiff Michael Gibson with Rule 39 affidavit (No summons(es) issued.) (Documents: 1-1 through 1-4) (ar) [Entry date 01/12/96]
1/11/96	—	RECEIPT regarding payment of filing fee paid; on 1/11/96 in the amount of \$ 120.00, receipt # 467351. (Ar) Entry date 01/12/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
1/12/96	—	SUMMONS issued as to defendant Jesse Brown (mk) [Entry date 01/22/96]
1/19/96	2	MINUTE ORDER of 1/19/96 by Hon. Ruben Castillo: Status hearing set for 9:30 am on 2/21/96. The Court's review of this complaint indicates that this case is amendable to expedited treatment by the Court. The parties are specifically directed to address this issue in their joint status report, which is to be filed by 2/16/96. Counsel for plaintiff to notify all other parties of this Court's order. (See reverse of minute order). Mailed notice (ar) [Entry date 01/23/96]
1/23/96	3	DESIGNATION OF ATTORNEY Ernest Yi Ling as US Attorney (ar) [Entry date 01/25/96]
1/25/96	4	RETURN OF SERVICE of summons executed upon defendant Jesse Brown on 1/12/96 as to Jesse Brown (ar) [Entry date 01/29/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
1/25/96	5	RETURN OF SERVICE of summons executed upon defendant Jesse Brown on 1/12/96 as to the U.S. Attorney (ar) [Entry date 01/29/96]
1/25/96	6	RETURN OF SERVICE of summons executed upon defendant Jesse Brown on 1/12/96 as to the James Burns (ar) [Entry date 01/29/96]
1/25/96	7	RETURN OF SERVICE of summons executed upon defendant Jesse Brown on 1/12/96 as to the Attorney General (ar) [Entry date 01/29/96]
1/25/96	8	DESIGNATION OF ATTORNEY Carole Judith Ryczek as US Attorney (ar) [Entry date 01/29/96]
2/16/96	9	INITIAL STATUS REPORT (nlh) [Entry date 02/20/96]
2/16/96	10	STATUS REPORT by defendant; Notice of filing (nlh) [Entry date 02/20/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
2/21/96	11	MINUTE ORDER of 2/21/96 by Hon. Ruben Castillo: Status hearing held and continued to 9:00 am on 3/22/96. Today's status hearing was held in open court and continued in chambers. All litigation in this case is stayed, including the date for the government's responsive pleading until settlement discussions are fully exhausted. Mailed notice (ar) [Entry date 02/22/96]
3/22/96	—	SCHEDULE set on 3/22/96 by Hon. Ruben Castillo: Status hearing held and continued to 9:00 a.m. on 5/10/96. Discovery ordered closed on 6/28/96. Defendant to answer or otherwise plead on or before 3/29/96. Mailed notice (ro)
4/16/96	12	MOTION by defendant to dismiss the amended [complaint], or in the alternative for summary judgment; Notice of motion. (dk) [Entry date 04/18/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
4/16/96	13	MINUTE ORDER of 4/16/96 by Hon. Ruben Castillo: Parties failed to appear. Plaintiff's response to defendant's motion to dismiss [12-1] or in the alternative for summary judgment [12-2] is due 05/16/96. Defendant's reply is due 5/28/96. Motion will be taken under advisement and the court will rule by mail. Status hearing set for 05/10/96 is stricken. Mailed notice (dk) [Entry date 04/18/96]
4/16/96	14	MEMORANDUM by defendant in support of motion to dismiss the amended [12-1], of motion for summary judgment [12-2] (dk) [Entry date 04/18/96]
4/16/96	15	RULE 12(m) Statement of material facts by defendant (Exhibits). (dk) [Entry date 04/18/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
5/21/96	16	MOTION by plaintiff to strike exhibits attached to defendant's rule 12(M) statement; Notice of motion. (dk) [Entry date 05/22/96]
5/21/96	17	MINUTE ORDER of 5/21/96 by Hon. Ruben Castillo: Plaintiff's motion to strike exhibits attached to defendant's rule 12(M) statement [16-1] is granted to the extent that exhibits 3 and 4 are stricken. Plaintiff's response to defendant's motion to dismiss [12-1] or, in the alternative for summary judgment [12-2] is due 05/28/96. Defendant reply is due 06/03/96. Court will rule by mail. Mailed notice (dk) [Entry date 05/22/96]
6/3/96	18	REPLY MEMORANDUM by defendant in support of defendant's motion to dismiss the amended [12-1], of motion for summary judgment [12-2] (Exhibits). (dk) [Entry date 06/04/96]



<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
6/7/96	19	MOTION by plaintiff for leave to file response instant, or in the alternative for summary judgment; Notice of motion. (dk) [Entry date 06/10/96]
6/7/96	20	MINUTE ORDER of 6/7/96 by Hon. Ruben Castillo: Plaintiff's motion for leave to file response to defendant's motion to dismiss [19-1], or in the alternative for summary judgment instant [19-2] is granted. Defendant's amended reply is due 06/26/96. A new discovery cutoff date will be set after the court rules on defendant's motion to dismiss [12-1], or in the alternative for summary judgment [12-2]. Mailed notice (dk) [Entry date 06/10/96]
6/7/96	21	MEMORANDUM OF LAW by plaintiff in response to motion to dismiss, or in the alternative [12-1], for summary judgment [12-2]. (dk) [Entry date 06/10/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
6/7/96	22	RESPONSE by plaintiff to defendant's rule 12(M) statement (Exhibits). (dk) [Entry date 06/10/96]
6/7/96	23	NOTICE of filing by plaintiff regarding response [22-1], regarding motion response [21-1] (dk) [Entry date 06/10/96]
6/12/96	24	TRANSCRIPT of proceedings for the following date(s): 05/21/96 before Honorable Ruben Castillo (dk) [Entry date 06/13/96]
6/26/96	25	REPLY by defendant to plaintiff Michael Gibson's rule 12(N) statement (Exhibits). (dk) [Entry date 06/27/96]
6/26/96	26	SECOND REPLY by defendant in support of defendant's motion to dismiss [12-1], or in the alternative for summary judgment [12-2] (dk) [Entry date 06/27/96]
10/2/96	27	MEMORANDUM, OPINION, AND ORDER (dk) [Entry date 10/03/96]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
10/2/96	28	MINUTE ORDER of 10/2/96 by Hon. Ruben Castillo: Enter memorandum opinion and order. Defendant's motion to dismiss the amended complaint [12-1], or in the alternative for summary judgment [12-2] is granted in part and denied in part. The court will retain jurisdiction over this case to determine a reasonable award of attorney's fees under the circumstances of this case. Plaintiff is given leave to file his petition for attorney's fees by 10/30/96. Defendant's objections, if any, due 11/21/96. Plaintiff's reply is due 12/01/96. The court will rule by mail terminating case. Mailed notice (dk) [Entry date 10/03/96]
10/2/96	29	ENTERED JUDGMENT (dk) [Entry date 10/03/96]
10/30/96	30	PETITION by plaintiff for attorneys' fees (Attachments); Notice of filing. (dk) [Entry date 10/31/96]

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<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
11/1/96	31	NOTICE OF APPEAL by plaintiff Michael Gibson from judgment entered [29-1], from Scheduling order terminating case [28-1], from motion minute order [28-2], from order [27-1], from motion minute order [17-1] (\$105.00 Paid) (cmf) [Entry date 11/04/96]
11/1/96	32	DOCKETING STATEMENT by plaintiff Michael Gibson regarding appeal [31-1]. (cmf) [Entry date 11/04/96]
11/4/96	—	TRANSMITTED to the 7th Circuit the short record on appeal. Mailed notice to all counsel. (cmf)
11/12/96	33	ACKNOWLEDGMENT of receipt of short record on appeal USCA 96-3776 (dk) [Entry date 11/13/96]

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<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
11/21/96	34	MEMORANDUM by defendant in opposition to plaintiff's petition for attorneys' fees [30-1] (dk) [Entry date 11/25/96]
11/26/96	—	TRANSMITTED to the 7th Circuit the long record on appeal no. 96-3776 consisting of one volume of pleadings, together with one volume of transcript of proceedings, filed under separate certificate. Mailed notice to all counsel. (hp)
12/2/96	35	REPLY by plaintiff in support of petition for attorneys' fees [30-1]; Notice of filing. (dk) [Entry date 12/03/96]
12/10/96	36	MINUTE ORDER of 12/10/96 by Hon. Ruben Castillo: Plaintiff's motion for attorneys' fees [30-1] is granted. The court hereby awards plaintiff total attorneys' fees of \$5,602.00 and total costs of \$352.25. The attorneys' fee award is awarded a rate of \$150.00 an hour, which this court expressly finds repre

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
		sents the appropriate hourly rate for work of this type in this area. The \$5,602.00 figure awards plaintiff's counsel this hourly rate for all work done prior to the complaint and all necessary work done after the filing of the complaint to the extent he prevailed in this case. Plaintiff is therefore awarded total fees and costs of \$5,954.25. The court expressly finds that this is a reasonable fee and costs award under the circumstances of this case. Mailed notice (dk) [Entry date 12/11/96]
5/21/98	37	OPINION from the 7th Circuit: Argued 9/24/97; Decided 3/3/98. (96-3776) (eav) [Entry date 05/28/98]
5/21/98	38	CERTIFIED COPY of order from the 7th Circuit: The judgment of the District Court is Reversed, with costs, and this cause is Remanded for further proceedings, in accordance with

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
		the decision of this Court entered on this date. [Appeal [31-1] (96-3776) (eav) [Entry date 05/28/98]
5/21/98	39	BILL OF COSTS submitted by U.S. Court of Appeals (eav) [Entry date 05/28/98]
5/21/98	40	LETTER from the 7th Circuit: Retaining record on appeal no. 96-3776 consisting of 1 volume of pleadings and 1 volume of transcripts (eav) [Entry date 05/28/98]
5/28/98	–	SCHEDULE set on 5/28/98 by Hon. Ruben Castillo: Status hearing set for 9:15 a.m. on 6/10/98 for the explicit purpose of setting this case for an immediate trial. Final pretrial order to be submitted on or before 6/24/98. Mailed notice (ro)
6/5/98	41	EMERGENCY MOTION by defendant Jesse Brown to stay trial; Notice of emergency motion (eav) [Entry date 06/10/98]

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
6/9/98	42	MINUTE ORDER of 6/9/98 by Hon. Ruben Castillo: Status hearing reset for 9/18/98 at 9:00 a.m. Defendant's emergency motion to stay trial is granted. [41-1] Pretrial order filing date of 6/24/98 is vacated. Government's answer to the complaint is due on or before 6/30/98. Parties are granted leave to conduct damages discovery until 9/15/98. Mailed notice (eav) [Entry date 06/10/98]
6/30/98	43	ANSWER by defendant Togo West Jr to complaint (eav) [Entry date 07/01/98]
9/3/98	45	MOTION by defendant to compel plaintiff to answer defendant's first set of interrogatories and requests to produce (Attachment); Notice of motion (eav) [Entry date 09/09/98]



<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
9/4/98	44	LETTER from the 7th Circuit returning the record on appeal no. 96-3776 consisting of one volume of pleadings (eav) [Entry date 09/08/98]
9/8/98	46	MINUTE ORDER of 9/8/98 by Hon. Ruben Castillo: Status hearing reset for 11/18/98 at 9:00 a.m. Discovery cutoff extended to 11/30/98. Defendant's motion to compel plaintiff to answer defendant's first set of interrogatories and requests to produce is granted. [45-1] Plaintiff is to comply with all outstanding discovery by 9/22/98. Mailed notice (eav) [Entry date 09/09/98]
11/18/98	–	SCHEDULE set on 11/18/98 by Hon. Ruben Castillo: Status hearing held and continued to 9:15 a.m. on 1/19/99. Plaintiff is to produce all outstanding discovery to the defendant by 12/7/98. Discovery cutoff extended to 12/31/98. mailed notice (ro)

<u>DATE</u>	<u>DOCKET NUMBER</u>	<u>PROCEEDINGS</u>
1/19/99	-	SCHEDULE set on 1/19/99 by Hon. Ruben Castillo: Status hearing held. Counsel for defendant appeared. Counsel should notify this court when the Supreme Court makes it decision regarding this case. mailed notice (ro)

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

96-3776

MICHAEL GIBSON, PLAINTIFF-APPELLANT

*v.*

JESSE BROWN, SECRETARY,  
DEPARTMENT OF VETERANS AFFAIRS, DEFENDANT-  
APPELLEE

**DOCKET ENTRIES**

<u>DATE</u>	<u>PROCEEDINGS</u>
11/4/96	U.S. civil case docketed. [96-3776] [888735-1] Appearance form due on 12/4/96 for Thomas P. Walsh, for Timothy M. Kelly. Transcript information sheet due 11/14/96. Appellant's brief due 12/16/96 for Michael Gibson (patb)
11/4/96	Filed Appellant Michael Gibson docketing statement. [96-3776] [888739-1] (patb)
11/4/96	[96-3776] ROA from No. Dist. Of Il., E. Div. due 11/15/96. (patb)

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<u>DATE</u>	<u>PROCEEDINGS</u>
11/12/96	Filed Seventh Circuit Transcript Information Sheet by Timothy M. Kelly for Appellant Michael Gibson. [96-3776] [888735-1] (tim)
11/12/96	Appearance form filed by attorney(s) Timothy M. Kelly for Appellant Michael Gibson. [96-3776] [888735-1] (grac)
11/26/96	Filed instanter motion by Appellee Jesse Brown to file docketing statement. [894471-1] O&3c docketing statement tendered. [894471-1] [96-3776] (jame)
11/26/96	Original record on appeal filed. Contents of record: 1 vol. pleadings; 1 vol. transcripts; [96-3776] [894538-1] (duda)
11/26/96	Terminated attorney Thomas P. Walsh for Jesse Brown and added attorney Ernest Y. Ling per appearance form. Appearance form filed for Appellee Jesse Brown by attorney Ernest Y. Ling. [96-3776] [888735-1] (jame)
12/2/96	Filed Appellee Jesse Brown docketing statement, per order. [96- 3776] [895524-1] (nanc)

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<u>DATE</u>	<u>PROCEEDINGS</u>
12/2/96	ORDER issued GRANTING instanter motion to file docketing statement. [894471-1] The clerk of this court is directed to file instanter the tendered copies of the appellant's Circuit Rule 3(c) docketing statement. [888735-1] AK [96-3776] (patb)
12/6/96	Filed motion by Appellant Michael Gibson to extend time to file appellant's brief. [897993-1] [96-3776] (fern)
12/16/96	ORDER issued GRANTING motion for extension of time to file appellant's brief. [897993-1] AK [96-3776] Appellant's brief due 1/3/97 for Michael Gibson. 2. The appellee(s) brief is due on or before 2/3/97 for Jesse Brown. 3. The reply brief, if any, is due 2/18/97 for Michael Gibson. (tim)
1/2/97	Filed motion by Appellant Michael Gibson to extend time to file appellant's brief. [906439-1] [96-3776] (tim)

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<u>DATE</u>	<u>PROCEEDINGS</u>
1/10/97	ORDER issued GRANTING motion for extension of time to file appellant's brief. [906439-1] AK [96-3776] Appellant's brief due 1/14/97 for Michael Gibson. 2. The appellee(s) brief is due on or before 2/14/97 for Jesse Brown. 3. The reply brief, if any, is due 2/28/97 for Michael Gibson. (nanc)
9/24/97	Case heard and taken under advisement by panel: Circuit Judge Kenneth F. Ripple, Circuit Judge Daniel A. Manion, Circuit Judge Michael S. Kanne. [96-3776] [990600-1] (broo)
9/24/97	Case argued by Timothy M. Kelly for Appellant Michael Gibson, Ernest Y. Ling for Appellee Jesse Brown. [96-3776] [888735-1] (broo)
3/3/98	Filed opinion of the court by Judge Manion. The decision of the District Court is REVERSED and this cause is REMANDED for further proceedings. (This opinion was circulated to the full court for a vote on whether to grant rehearing en banc in advance of decision. See Cir.R. 40(e). There were no votes to grant rehearing.) Circuit Judge Kenneth

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<u>DATE</u>	<u>PROCEEDINGS</u>
	F. Ripple, Circuit Judge Daniel A. Manion, Circuit Judge Michael E. Kanne, [96-3776] [888735-1] (patb)
3/3/98	ORDER: Final judgment filed per opinion. With costs: y. [96- 3776] [1037637-1] (patb)
3/16/98	Filed Appellant Michael Gibson Bill of Costs in the amount of \$993.00. [96-3776] [888735-1] (fran)
4/17/98	Filed 30c Petition for Rehearing with Suggestion for Rehearing Enbanc by Appellee Jesse Brown. Dist. [96-3776] [1053562-1] (orac)
4/21/98	Terminated attorney Ernest Y. Ling for Jesse Brown and added attorneys Marleigh D. Dover and Steve Frank, per appearance form. Appearance form filed for Appellee Jesse Brown by attorneys Marleigh D. Dover and Steve Frank. [96-3776] [929697-1] (orac)
5/7/98	ORDER: Appellee Jesse Brown Petition for Rehearing with Suggestion for Rehearing Enbanc is DENIED. [96-3776] [1053562-1] (heid)

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<u>DATE</u>	<u>PROCEEDINGS</u>
5/15/98	MANDATE ISSUED WITH BILL OF COSTS IN THE AMOUNT OF \$993.00. RECORD ON APPEAL TO BE RETURNED LATER. (Contents to be returned: 1 vol. pleadings; 1 vol. transcripts.) [96-3776] [929697-1] (nick)
5/22/98	Filed mandate receipt. [96-3776] [1064640-1] (fran)
8/10/98	Filed notice from the Supreme Court of the filing of a Petition for Writ of Certiorari. Supreme Court Case No. 98-238. [96-3776] [1088737-1] (jame)
9/3/98	Partial record returned to the District Court. (Contents returned: 1 vol. pleadings. Record to be returned: 1 vol. transcripts.) [96-3776] [888735-1] (fern)
9/28/98	Filed record receipt. [1103730-1] [96-3776] (fran)
1/25/99	Field order from the Supreme Court GRANTING the Petition for Writ of Certiorari. Supreme Court Case No.: 98-238. [96-3776] [1140882-1] (patb)







IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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No. 96 C 0233

MICHAEL GIBSON, PLAINTIFF

*vs.*

JESSE BROWN, SECRETARY,  
DEPARTMENT OF VETERANS AFFAIRS, DEFENDANT

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**COMPLAINT**

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Plaintiff Michael Gibson, by his attorney Timothy M. Kelly, complains of defendant Jesse Brown, Secretary of the Department of Veterans Affairs, as follows:

1. Plaintiff Michael Gibson is a natural person residing in Lombard, Illinois, in the Northern District of Illinois.
2. Defendant Jesse Brown is the Secretary of the Department of Veterans Affairs, an agency in the executive branch of the government of the United States of America.
3. The transactions and events giving rise to this complaint occurred in whole or in substantial part in Hines, Illinois, in the Northern District of Illinois.
4. The United States District Court has jurisdiction of this cause pursuant to 28 U.S.C. § 1331 (federal

question); 28 U.S.C. § 1346 (United States defendant); and 42 U.S.C. §§ 2000e-5 and 2000e-16 (employment discrimination).

5. Throughout 1992, plaintiff Michael Gibson (“Gibson”) was employed as a GS-9 Accountant in the Department of Veterans Affairs (“VA”) Fiscal Division, Supply Depot, Hines, Illinois. In 1992, the VA advertised a position as a GS-12 Supervisory Accountant, which would have represented a promotion for Gibson. Gibson applied for the promotion, but the VA selected a female applicant.

6. On December 7, 1992, Gibson filed a timely equal employment opportunity complaint alleging discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*

7. On December 28, 1993, the VA issued its final agency decision finding no discrimination.

8. On January 24, 1994, Gibson filed a timely appeal with the United States Equal Employment Opportunity Commission (“EEOC”) from the decision of defendant Jesse Brown, Secretary of the VA.

9. On October 6, 1995, the EEOC issued its final decision, reversing defendant’s decision. A true and accurate copy of the EEOC’s decision is attached to this complaint as Exhibit “A.”

10. The EEOC found that Gibson established a *prima facie* case of discrimination on the basis of sex, and that the VA’s purported nondiscriminatory reasons for passing over Gibson, including his supervisor’s criti-

cisms, “were a pretext for discrimination.” (Exhibit A, pp. 6, 8.)

11. The EEOC ordered the VA to promote Gibson to the GS-12 Supervisory Accountant position within 30 days, and to calculate backpay within 60 days. Although the EEOC ordered the VA to pay Gibson’s attorney’s fees, Gibson processed his own claim up to the date of the EEOC decision. The EEOC did not order the VA to pay front pay, compensatory damages for mental anguish or emotional distress, or attorney’s fees in enforcing the EEOC’s order or in pursuing further remedies.

12. The VA has filed no request for reconsideration or appeal from the decision of the EEOC, and the time for doing so has expired. Therefore, the VA cannot contest the EEOC decision, and the EEOC decision is binding upon the VA.

13. The VA has promoted Gibson to GS-12, but it did not do so within the time ordered by the EEOC.

14. The VA has neither calculated nor paid Gibson his backpay in violation of the EEOC order.

15. Gibson received the EEOC decision on October 13, 1995. This complaint is filed within the 90 day period for filing civil actions.

16. Gibson accepts and adopts the EEOC decision with respect to the VA’s liability for employment discrimination, and Gibson’s entitlement to promotion, backpay and attorney’s fees through October 6, 1995. Gibson is entitled to an order enforcing the EEOC decision on these matters.

17. In addition to the wrongful deprivation of the promotion and backpay, Gibson has suffered and is continuing to suffer humiliation, mental anguish and emotional distress as a direct and proximate result of the VA's intentional and unlawful discrimination. Gibson worked for three years under a supervisor who wrongfully criticized his character and abilities in order to pass him over and promote a far less experienced co-worker; and the VA supported the supervisor in her wrongful criticism of Gibson. Now, Gibson must work for the very supervisor who discriminated against him, a supervisor whose motives and credibility were successfully challenged by Gibson.

18. Gibson is entitled to an award of compensatory damages, front pay, and attorney's fees since October 6, 1995, all in an amount in excess of \$50,000.00.

WHEREFORE, plaintiff Michael Gibson requests that this Honorable Court enter judgment in his favor against defendant Jesse Brown, Secretary, Department of Veterans Affairs, as follows:

- A. Ordering defendant to submit a backpay calculation to plaintiff forthwith;
- B. Enforcing the EEOC decision requiring the VA to adhere to the deadline for payment of the undisputed portion of backpay as if defendant has complied with the deadline for calculating backpay;
- C. Declaring the rights of the parties with respect to assignment, transfer, retirement, pension and other terms and benefits of employment;
- D. Setting a trial by jury as to compensatory damages;

E. Entering judgment in favor of plaintiff against defendant for compensatory damages; and

F. Awarding plaintiff front pay, attorney's fees and such other or further relief as may be deemed just.

**PLAINTIFF DEMANDS A JURY TRIAL  
AS TO ALL ISSUES TRIABLE BY JURY.**

Respectfully Submitted,

BEERMANN, SWERDLOVE, WOLOSHIN,  
BAREZKY, BECKER, GENIN & LONDON

By: /s/ TIMOTHY M. KELLY  
TIMOTHY M. KELLY

BEERMANN, SWERDLOVE, WOLOSHIN  
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[Seal Omitted]

U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION

Office of Federal Operations  
P.O. Box 19848  
Washington, D.C. 20036

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Appeal No. 01941821  
Agency No. 93-2306

MICHAEL GIBSON, APPELLANT

*v.*

JESSE BROWN, SECRETARY,  
DEPARTMENT OF VETERANS AFFAIRS, AGENCY

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**DECISION**

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INTRODUCTION

On January 24, 1994, Michael Gibson (hereinafter, appellant) filed an appeal with the Equal Employment Opportunity Commission (hereinafter, the Commission or the EEOC) from a final decision of the Secretary, Department of Veterans Affairs (hereinafter, the agency) dated December 28, 1993. The final agency decision (FAD) concerns appellant's equal employment opportunity (EEO) complaint, alleging discrimination based on sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* The



Commission hereby accepts the appeal in accordance with EEOC Order No. 960, as amended.

#### ISSUES PRESENTED

Whether appellant proved by a preponderance of the evidence that the agency discriminated against him on the basis of sex (male) when in late 1992, he was nonselected for the position of Supervisory Accountant, GS-11/12, under either Vacancy Announcement (VA) No. 92-23 or 92-41.

#### CONTENTIONS ON APPEAL

Appellant contends that the agency's reasons to support the contested selection lack credence. As proof, he maintains that the justification provided by the agency contradicts the performance appraisals he consistently received and also notes that management never counseled him about his alleged deficiencies.

The agency insists that the criticisms voiced by the agency are not at odds with appellant's performance appraisals since they impact on qualifications such as motivation and initiative which are different from the "division-wide" standards applied to performance assessments.

#### BACKGROUND

On December 7, 1992, appellant filed a formal EEO complaint raising the issue stated above. The complaint was investigated and following the investigation, appellant was timely provided a copy of the investigative file. Appellant then requested a hearing before an EEOC Administrative Judge (AJ) but later withdrew his petition and instead requested a FAD based on the existing record. The agency issued its [*sic*] decision on

December 28, 1993, finding no discrimination. It is from this decision that appellant now appeals.

At the time of the alleged discriminatory act, appellant was employed by the agency as a GS-9 Accountant in the Fiscal Division, Supply Depot, Hines, Illinois. He began his employment with the agency in 1988 as an accountant in Albuquerque, New Mexico. He was assigned to the Hines facility in 1990.

On February 28, 1992, the agency advertised the subject position nation-wide at the GS-11/12 level through VA 92-24. Appellant applied for the position and was interviewed but was not selected. The record discloses that a female applicant from another state was initially awarded the position but declined the offer. Then, a male candidate was selected but this selection was disapproved by Central Office. On June 6, 1992, the agency readvertised the position in-house under VA 92-41, at the GS-9/11/12 level. The selectee (ST), a GS-9 female accountant with the Fiscal Division since 1991, was the only new applicant under the second announcement.

Appellant contended that he was far more qualified than the ST. In this regard, appellant claimed that the ST lacked the technical knowledge and the experience for the position due to her short tenure at the Fiscal Division and her limited exposure to the different accounting functions conducted in the Division. As a consequence, appellant maintained that the ST did not have the necessary expertise to perform as a supervisor. He noted that during the 13 years he had worked at the Fiscal Division, he had received "four satisfactory, five highly satisfactory, and four superior performance ratings". He had received several cash

awards and special contribution awards in recognition of his work as well. In addition, and contrary to the ST, he was selected for and completed the 12-month VA Central Office Accountant program.

The record discloses that the selecting officials (SOs) for the contested position were the Chief of the Fiscal Division (CFD) and the Assistant Financial Manager (AFM), both females.

The CFD testified that she based her decision on a review of information submitted by the applicants, taking into consideration “education, experience, if they had supervisory experience . . ., motivation and initiative . . . the accuracy and thoroughness of work, supervisory skills, if any, training, past performance ratings, writing ability is extremely important and cooperation with peers and supervisors.” Regarding the ST, the CFD noted that she “had a lot of banking and accounting experience from prior years . . . about 10 years . . . she was extremely motivated . . . had won an award for being on a special project . . . had excellent writing ability . . . teacher credentials . . . was good in helping other people . . . [and] she worked on receivables and has gotten those down to the lowest level we have had since I have been here.”<sup>1</sup>

In reference to appellant, the CFD observed that she was dissatisfied with his performance because appellant had submitted the functional cost report two months late on one occasion when he was detailed as a supervisor. The witness also noted that when appellant was “acting Chief” of the accounting section, he com-

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<sup>1</sup> The CFD acknowledged that it had been another coworker and not the ST who received “an award for receivables,” however.

plained to her several times that “he couldn’t get the cooperation of the people who worked for him,” which in her view demonstrated lack of leadership. The CFD further noted that appellant was argumentative during his tenure as acting Chief. When the document control system was implemented, he told her that he needed five additional persons to do the job without offering her any alternative.

In her opinion, appellant “lacked the initiative to attempt to improve the accuracy and efficiency of the section appearing to be satisfied with the status quo.” Although she acknowledged that appellant had “sufficient training and experience,” the CFD maintained that his “motivation and initiative were average.” Notwithstanding this observation, the CFD noted that during his tenure as acting Chief, appellant received fully successful performance ratings in 1989 and 1990 and a highly successful one in 1991.

The AFM also provided testimony in this matter. The AFM testified that although the ST did not have the experience working in other areas of the accounting section outside the function of accounts receivables, she was “very motivated.” The affiant also observed that “you don’t need to have expertise to be a supervisor.” In this connection, the AFM maintained that accounts receivables was “a very important part of the accounting section.” The witness observed that in reaching their decision, she and the CFD took into consideration “education . . . training . . . supervisory comments, . . . academic achievements and attitude.” She further observed that the ST had experience in “accounting and banking” in private industry, was a “hard worker,” and also participated in a study conducted by the Service

and Reclamation Division. As to appellant, the AFM asserted that he “was not as motivated as [the ST]” and noted that “[appellant] didn’t put any effort into improving the procedures.” The affiant reiterated the CFD’s testimony that appellant had required five individuals to perform document control and also that appellant “had some problems getting subordinates’ cooperation.” The witness failed to provide specific details to support her observations. The AFM further noted that in December 1991 Central Office requested that operations expenses be reduced but that appellant failed to do a cost study and did not address said request.<sup>2</sup>

Appellant rebutted the SOs’ testimony, claiming that the ST had been preselected for the position and favored by management since she came to the Fiscal Division in February 1991. In this regard, appellant noted that the ST came to the Division at the GS-7 level and was promoted to the contested supervisory position in 1-1/2 years. Responding to the charge that as an acting Chief he was argumentative and requested five additional employees to implement document control procedures, appellant observed that he discussed this matter with the CFD but denied being argumentative. In support of his position at that time, appellant noted that “now they have a database that does that managed by a full time employee.” Appellant denied that he complained to the CFD about lack of cooperation from his subordinates or that he refused to comply with a request from Central Office pertaining to expense reduction. In regard to the request from Central Office,

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<sup>2</sup> The AFM acknowledged that she did not know if appellant actually performed the study because she was on vacation.

appellant claimed that he did not know what the CFD really meant. Appellant explained that when he was Chief Accountant he had to deal with a discrepancy in a certain account and to this effect he called Central Office. Appellant indicated that he was told by Central Office that the problem would be addressed at their level, not at Hines, and that he informed the CFD about the instructions he received from Central Office.

A review of both VAs 92-24 and 92-41 discloses the following knowledge, skills and abilities as rating factors for the position:

1. Ability to effectively communicate orally and in writing.
2. Knowledge of supervisory methods and techniques to develop, motivate and manage an accounting staff.
3. Knowledge of principles and practices of Accounts Receivable/Payable, cost accounting, cost control and budget planning involving CALM and Log/CALM computer systems.
4. Knowledge of Federal accounting language, accounting principles, financial statements, and determining the nature and quality of the operations.
5. Knowledge of and understanding of computer technology, including electronic data interchange in a modern fiscal organization.

The agency had failed to include in the file a copy of appellant's SF-171.<sup>3</sup> The ST's SF-171 reveals that she earned a BA degree in January 1991 and began her employment at the Supply Depot on February 1991 as an Accountant in the Analysis and Reconciliation Section. In her SF-171, the ST indicated that prior to her current position, from 1983 to 1989, she worked part-time (30 hours) as the office manager (60%) and bookkeeper (40%) of a music studio, where she supervised one employee. From 1983 through 1989, she was employed by a Bank as a Teller (60%) and bookkeeper (40%) of a music studio, where she supervised one employee. From 1983 through 1989, she was employed by a Bank as a Teller (60%) and Account Representative (40%). From 1977 through 1983, she served as a rental representative in a car rental corporation. The ST's SF-171 is dated June 3, 1992. On June 12, 1992, the ST submitted an employee supplemental qualifications statement to her SF-171, in which she extensively addressed the KSAs set forth in the Vacancy Announcement.

Pursuant to the facility's Merit Promotion Policy No. 6-88, candidates for GS positions were rated by a promotion panel unless there were six or less qualified candidates for the job. Since the applicant pools for VAs 92-24 and 92-41 were of six or less candidates, no promotion panel was needed. The record shows that an "unofficial merit promotion panel"<sup>4</sup> was constituted to rate the applicants, however. Appellant was awarded

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<sup>3</sup> The agency did include [a] copy of the SF-171 submitted by the male applicant initially selected by the agency as its second choice. This document is irrelevant to the matter before us.

<sup>4</sup> The record does not identify the members of this panel.

the highest score, 18 points. The ST received 8 points, the lowest rating of all the in-house applicants.

According to appellant's testimony, appellant served as supervisory account for five months and also served as supervisory accountant<sup>5</sup> from September 16 through December 15, 1991. The record reveals that in March 1992 appellant applied for the position of Assistant Chief, Fiscal Service, in Prescott, Arizona. The AFM prepared appellant's supervisory appraisal, and from out of six KSA's she gave applicant two 5's and four 4's. An examination of this document reveals that in reference to element 1, "Knowledge of accounting and budget operations in order to make sound decisions involving funds," the AFM noted in relevant part, "This experience accords him the ability to identify and analyze problems and find alternative solutions to these problems as demonstrated by his performance specially when he served as Acting Chief of Accounting. . . ."

Pertaining to element two, "Ability to organize work, establish priorities and meet deadlines," the AFM indicated "He is excellent in organizing work, establishing priorities and meeting deadlines. This ability was best demonstrated when he was Acting Chief of Accounting. All reports under his control were submitted on time. . . ."

With regard to element five for which he received five score points, "Ability to manage, supervise and assign workloads, delegate authority, etc." the AFM stated: "He acquired these abilities when he served as Chief of Accounting. He managed the section very well. He

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<sup>5</sup> This position is frequently referred to by management as "Chief of Fiscal Service."



recognized problems and addressed them accordingly. He assigned workloads and delegated authority to his subordinates. By doing these, he found sufficient time to manage and supervise the accounting staff.”

The record discloses that appellant was rated “highly successful” for the period April 1, 1991, through March 31, 1992. This performance appraisal was ratified by the AFM. The referenced appraisal covered the period appellant was detailed as supervisory accountant (September 16, 1991 through December 15, 1992).

The record reveals that all managerial positions in the Fiscal Division were held by females.

#### ANALYSIS AND FINDINGS

Appellant’s allegation of discrimination concerns disparate treatment in employment. This allegation of intentional employment discrimination is properly analyzed under a three-part evidentiary scheme. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-805 (1973) (applying the evidentiary scheme to Title VII); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 252-259 (1981) (clarifying the scheme).

The record indicates that appellant succeeds in establishing a *prima facie* case of discrimination on the basis of sex. It is undisputed that appellant was qualified for the position and despite his qualifications the position was awarded to a female.

The agency, through the SOs, articulated legitimate nondiscriminatory reasons to justify nonselecting appellant. Appellant lacked the attitude and motivation

to successfully perform in a supervisory position. In support of this contention, the agency points to appellant's alleged deficiencies when he served as acting Chief of the accounting section and further notes that appellant was argumentative, untimely in his reports, and his "motivation and initiative were average." The Commission finds that the agency has met its burden of going forward with the evidence.

In order to prevail, appellant must now show by a preponderance of the evidence that the reasons advanced by the agency are pretextual. Based on the evidence of record, the Commission finds that appellant

According to the SOs, appellant was not selected because they were dissatisfied with his performance while detailed as a supervisor. In this regard, the CFD testified that appellant submitted the functional cost report two months late, complained that he could not get the cooperation of his subordinates, and was argumentative when he requested more personnel to implement the document control system. In addition, the AFM observed that appellant failed to address a cost study request from Central Office. The agency further contended that, in contrast to appellant, the ST was a "hard worker" and was "extremely motivated," had impressive writing ability and was good in helping people, qualities she enhanced through her teaching experience. The agency also highlighted the fact that the ST had significantly lowered the accounts receivables and had also received an award for her participation in a study conducted by the Service and Reclamation division. The agency emphasized the ST's "banking" experience in the private sector and further observed that accounts receivables, the accounting

function to which the ST was assigned, was “a very important part of the accounting section.”

After carefully reviewing all the evidence before us, we find that the agency’s reasons for not selecting appellant, as articulated by the SOs, are unsupported by the record.

The record discloses that appellant had been an accountant with the agency since 1988. The agency has not disputed his testimony that during these years of employment he had received cash awards and special contributions awards in recognition of his work. Nor has the agency denied that his performance appraisals had been above average throughout the years. It is significant to note that he received a “highly successful” rating which covered the period he performed as acting Chief of the accounting section. This performance appraisal was approved by the AFM. The record further reveals that when in March 1992 appellant applied for the position of Assistant Chief, Fiscal Service, in Prescott Arizona, the AFM gave appellant a glowing supervisory appraisal for promotion, mostly based on his successful accomplishments as Acting Chief of Accounting in the Hines Supply Depot. The record further discloses that appellant was selected for and completed the 12-months VA Central Office account program. Furthermore, when assessed by the unofficial merit promotion panel that rated the applicants, the panel awarded appellant the highest score (18 points) as compared with the ST who received the lowest rating (8 points).

Regarding the ST, we note, that she came to the agency in 1991 and that her work had been limited to the accounts receivable function. Her SF-171 demonstrates

that her “banking experience” had been embellished by the agency and also that she had no teaching credentials whatsoever. Although we do not dispute the fact that this employee (the ST) may well have had outstanding qualities, the issue before us is whether this individual was equally or better qualified than appellant. The weight of the evidence establishes that she was not. We find no merit in the agency’s contention, as stated in its FAD, that it was appellant’s performance as supervisor and not his performance as an accountant which provided the basis for his non-selection. There is not evidence that he was counseled over these deficiencies. He received a highly successful appraisal during his tenure as supervisor. He was issued a glowing supervisory appraisal for promotion to a supervisory position as Assistant Chief of Fiscal Services in another location.

This Commission has consistently held that employers have greater flexibility when choosing management-level employees, because of the nature of such positions. *Wrenn v. Gould*, 808 F.2d 493 (6th Cir. 1987). We find, however, that the ST’s experience and qualifications for the job could not compare to appellant’s. In cases where the complainant is found objectively better qualified than the ST, the use of subjective criteria such as “motivation,” “initiative,” and “cooperation” while not impermissible, “may offer a convenient pretext for giving force and effect to . . . prejudice.” *Thornton v. Coffey*, 618 F.2d 686, 691 (10th Cir. 1980). Such standardless subjective criteria have been found to be convenient mechanisms for discrimination. *Boykin v. Georgia Pacific Corp.*, 706 F.2d 1384, 1390 (5th Cir. 1983); *cert. denied*, 465 U.S. 1006 (1984). This is particularly true where, as here, the subjective reasons

given for not choosing appellant were unsupported by independent evidence.

In light of all the above, the Commission is not persuaded that the agency has rebutted the inference of discrimination established by appellant through his *prima facie* case. We find that the inconsistencies found in the testimony provided by the SOs, when compared with other evidence of record, discredit the agency's proffered reasons. As the record stands, we conclude that the agency's reasons to justify its selection of the ST lack credence and were a pretext for discrimination.

#### CONCLUSION

Accordingly, after a review of the entire record, the Commission hereby REVERSES the final agency's decision. The agency shall comply with the following ORDER.

#### ORDER (D1092)

The agency is ORDERED to take the following remedial action:

Within 30 calendar days of its receipt of this decision, the agency shall promote appellant to the position of Supervisory Accountant, GS-11/12, retroactive to the date the ST was selected.

The agency shall determine the appropriate amount of backpay with interest, and other benefits due appellant, pursuant to 29 C.F.R. §1614.501, no later than sixty (60) calendar days after the date this decision becomes final. The appellant shall cooperate in the agency's efforts to compute the amount of backpay and benefits due, and

shall provide all relevant information requested by the agency. If there is a dispute regarding the exact amount of backpay and/or benefits, the agency shall issue a check to the appellant for the undisputed amount within sixty (60) calendar days of the date the agency determines the amount it believes to be due. The appellant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."

The agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation of the agency's calculation of backpay and other benefits due appellant, including evidence that the corrective action has been implemented.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0595)

Compliance with the Commission's corrective action is mandatory. The agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the appellant. If the agency does not comply with the Commission's order, the appellant may petition the Commission for enforcement of the order. 29 C.F.R.

§1614.503 (a). The appellant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. *See* 29 C.F.R. §§1614.408, 1614.409, and 1614.503 (g). Alternatively, the appellant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.408 and 1614.409. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. §2000e-16(c) (Supp. V 1993). If the appellant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. *See* 29 C.F.R. §1614.410.

#### POSTING ORDER (G1092)

The agency is ORDERED to post copies of the attached notice at the Supply Depot, Hines, Illinois. Copies of the notice, after being signed by the agency's duly authorized representative, shall be posted by the agency's duly authorized representative, shall be posted by the agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

## ATTORNEY'S FEES (H1092)

If applicant has been represented by an attorney (as defined by 29 C.F.R. §1614.501 (e)(1)(iii), he/she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. §1614.501 (e). The award of attorney's fees shall be paid by the agency. The attorney shall submit a verified statement of fees to the agency—*not* to the Equal Employment Opportunity Commission, Office of the Federal Operations—within thirty (30) calendar days of this decision becoming final. The agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. §1614.501.

## STATEMENT OF RIGHTS-ON APPEAL

## RECONSIDERATION (M0795)

The Commission may, in its discretion, reconsider the decision in this case if the appellant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued; or
2. The previous decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy; or
3. The decision is of such exceptional nature as to have substantial precedential implications.



Requests to reconsider, with supporting arguments or evidence, MUST BE FILED WITHIN THIRTY (30) CALENDAR DAYS of the date you receive this decision, or WITHIN TWENTY (20) CALENDAR DAYS of the date you receive a timely request to reconsider filed by another party. Any argument in opposition to the request to reconsider or cross request to reconsider MUST be submitted to the Commission and to the requesting party WITHIN TWENTY (20) CALENDAR DAYS of the date you receive the request to reconsider. *See* 29 C.F.R. §1614.407. All requests and arguments must bear proof of postmark and be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed filed on the date it is received by the Commission.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely. If extenuating circumstances have prevented the timely filing of a request for reconsideration, a written statement setting forth the circumstances which caused the delay and any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. *See* 29 C.F.R. § 1614.604(c).

#### RIGHT TO FILE A CIVIL ACTION (R0993)

This is a decision requiring the agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District

Court. It is the position of the Commission that you have the right to file a civil action in an appropriate United States District Court WITHIN NINETY (90) CALENDAR DAYS from the date that you receive this decision. You should be aware, however, that courts in some jurisdictions have interpreted the Civil Rights Act of 1991 in a manner suggesting that a civil action must be filed WITHIN THIRTY (30) CALENDAR DAYS from the date that you receive this decision. To ensure that your civil action is considered timely, you are advised to file it WITHIN THIRTY (30) CALENDAR DAYS from the date that you receive this decision or to consult an attorney concerning the applicable time period in the jurisdiction in which your action would be filed. In the alternative, you may file a civil action AFTER ONE HUNDRED AND EIGHTY (180) CALENDAR DAYS of the date you filed your complaint with the agency, or filed your appeal with the Commission. If you file a civil action, YOU MUST NAME AS THE DEFENDANT IN THE COMPLAINT THE PERSON WHO IS THE OFFICIAL AGENCY HEAD OR DEPARTMENT HEAD, IDENTIFYING THAT PERSON BY HIS OR HER FULL NAME AND OFFICIAL TITLE. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. Filing a civil action will terminate the administrative processing of your complaint.

#### RIGHT TO REQUEST COUNSEL (Z1092)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action

without payment of fees, costs, or other security. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above (“Right to File A Civil Action”).

FOR THE COMMISSION:

/s/ RONNIE BLUMENTHAL  
 RONNIE BLUMENTHAL, Director  
 Office of Federal Operations

OCT 06 1995

DATE

[Seal Omitted]

U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Washington, D.C. 20036

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
An Agency of the United States Government

This Notice is posted pursuant to an Order by the United States Equal Employment Opportunity Commission dated \_\_\_\_\_ which found that a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.* has occurred at this facility.

Federal law requires that there be no discrimination against any employee or applicant for employment because of the person's RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, AGE, or PHYSICAL or MENTAL DISABILITY with respect to hiring, firing, promotion, compensation, or other terms, conditions or privileges of employment.

The Supply Depot at Hines, Illinois, supports and will comply with such Federal law and will not take action against individuals because they have exercised their rights under law.

The Supply Depot at Hines, Illinois, has remedied the employee affected by the Commission's finding. The Supply Depot at Hines, Illinois, will ensure that officials responsible for personnel decisions and terms and conditions of employment will abide by the require-

ments of all Federal equal employment opportunity laws.

The Supply Depot at Hines, Illinois, will not in any manner restrain, interfere, coerce, or retaliate against any individual who exercise his or her right to oppose practices made unlawful by, or who participates in proceedings pursuant to, Federal equal employment opportunity law.

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Date Posted: \_\_\_\_\_

Posting Expires: \_\_\_\_\_

29 C.F.R. Part 1614